

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 90-305-C - ORDER NO. 90-663  
JULY 10, 1990

IN RE:	Request of Southern Bell	)	
	Telephone & Telegraph Company	)	
	for approval of revisions to	)	ORDER FINDING LACK
	its Access Service Tariff to	)	OF AUTHORITY AND
	allow Provision of Billing and	)	INSTITUTING PROCEEDING
	Collection Services to	)	TO DETERMINE WHETHER
	Clearinghouse Agents for Calls	)	SUCH AUTHORITY SHOULD
	Billed on Behalf of Properly	)	BE GRANTED
	Certified COCOT Providers	)	
	(Re. Tariff No. 90-27)	)	

INTRODUCTION

On February 26, 1990, Southern Bell Telephone and Telegraph Company (Southern Bell) filed with the Public Service Commission of South Carolina (the Commission), a request for approval of revisions to its Access Services Tariff. The proposed revisions would have allowed Southern Bell to provide billing and collection services for interLATA calls to clearinghouse agents for calls placed on behalf of properly certified COCOT providers. The matter was duly noticed, and Coin Telephone, Inc. (Coin Telephone), Pay-Tel Communications (Pay-Tel) and Intellical, Inc. (Intellical) filed a joint Petition to Intervene. The matter was then set for a hearing.

On April 25, 1990, Southern Bell filed a request to withdraw its proposed tariff revisions. In response, the intervenors filed

a Petition to Disallow the Withdrawal of the provisions. By Order No. 90-505, dated May 9, 1990, the Commission allowed Southern Bell to withdraw its proposed tariff revisions. However, the Commission determined the Petitioners had raised certain issues which needed to be addressed by the Commission, specifically, whether Southern Bell should be required to provide billing and collection services for intraLATA calls placed through the COCOT telephone, whether COCOT providers must comply with all regulations applicable to interexchange carriers and alternate operator service providers, and whether COCOT providers should be required by Southern Bell to obtain an "appropriate...Identification Code" for transmittal to Southern Bell.

The hearing was duly commenced at 10:30 a.m. on June 6, 1990, in the Commission's hearing room, the Honorable Marjorie Amos-Frazier, presiding. John F. Beach, Esquire, and James J. Freeman, Esquire, represented Intellical, Coin Telephone and Pay-Tel; Fred A. Walters, Esquire, represented Southern Bell; and Marsha A. Ward, General Counsel, represented the Commission Staff.

Two public witnesses, Ronny Blackmon, jail administrator of the Lancaster County Detention Center and Bobby Mickles, jail administrator for the Kershaw County Detention Center, testified concerning COCOT telephones provided by the Petitioners and used in their confinement facilities. The Petitioners presented the testimony of B. Reid Presson, Jr., Vice President of "Intellical" and John Vincent Townsend, III, owner and President of "Pay-Tel," who testified as to the capabilities of the COCOT telephones they

provide to confinement facilities. Mr. Townsend also testified in rebuttal to Southern Bell's pre-filed testimony as to the authority and the public need for the services provided by the Petitioners. Southern Bell presented the testimony of C.L. Addis, Staff Manager - Regulatory Affairs, in opposition to the request that Southern Bell be required to furnish billing and collection services to the COCOT's for "0+" intraLATA and local calls made from confinement facilities.

At the conclusion of the hearing, Southern Bell moved that the Commission issue an order for Pay-Tel and Coin Telephone to cease and desist from providing telecommunications services in South Carolina until such time as they are properly authorized to do so, that Pay-Tel and Coin Telephone be ordered to account for and return to the general fund of the Commission or to the particular local exchange company involved any and all revenues they have received from providing such services in South Carolina, that Pay-Tel and Coin Telephone be ordered to refund any revenues reflecting amounts charged in excess of 80 cents per "0+" call and that the Commission institute a generic investigation into whether COCOTs are adhering to the terms of their certification from the Commission.

A transcript of 304 pages was compiled, reflecting the evidence presented by the parties. In addition, six (6) hearing exhibits were introduced. The Chairman withheld ruling on the admissibility of certain portions of the exhibits until the final order is issued in this docket. It is from this record, including

the matters judicially noticed, that the Commission must decide the issues presented in this docket.

FINDINGS AND CONCLUSIONS

Based on the evidence and testimony presented to the Commission by the parties in this matter, the Commission makes the following findings of fact and conclusions of law:

A. Admissibility of Exhibits

Counsel for Southern Bell objected to several exhibits attached to the prefiled testimony of witness Townsend. Specifically, Southern Bell objected to Exhibit A, Exhibit B, Exhibit D, certain prefiled testimony and Exhibit I. Exhibit A is alleged to be a filing made at the North Carolina Public Utilities Commission in which a number of parties participated. The participating parties are shown on the last page of that Exhibit and none of the COCOTs involved in this proceeding participated in the North Carolina filing. Additionally, this document submitted for consideration has not been certified as a true and correct copy from the North Carolina Public Utilities Commission. The Commission notes that the rules of evidence apply in hearings before this Commission. The Commission notes that its rules of practice and procedure do not specifically address documents of another Commission submitted by parties in proceedings before the Commission, but R.103-852 provides that the South Carolina Rules of Civil Procedure apply when the Commission's rules are silent. Rule 44(a)(2) of the South Carolina Rules of Civil Procedure require that "a foreign official record, or an entry therein, when

admissible for any purpose may be evidenced by an official publication thereof; or a copy thereof, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position (i) of the attesting person, or (ii) of any foreign official whose certificate of genuineness of signature and official position relating to the attestation...." Exhibit A is not attested nor certified and Southern Bell's objection is sustained.

As to Exhibit B, Southern Bell objected to the documents being portions of telephone calls made in North Carolina. Southern Bell contends these documents are hearsay and are irrelevant to this proceeding. Southern Bell contends they are offered as examples of fraudulent calls. Counsel for Pay-Tel agreed that the documents related to fraudulent calls but only to fraudulent calls in North Carolina. Counsel asserts that the documents show the generic nature of this fraud from confinement facilities and should be admissible in this proceeding. The Commission sustains Southern Bell's objections on the grounds of relevancy and hearsay. The Commission has determined that telephone calls purportedly made from confinement facilities in North Carolina are not relevant to demonstrate fraud from confinement facilities in South Carolina.

Exhibit D is a excerpt from a transcript of a proceeding held before the North Carolina Public Utilities Commission. Southern Bell contends that submission of a transcript of evidence held before an administrative or judicial body in a state other than the State of South Carolina can only be submitted and accepted into

evidence if that transcription of evidence is offered under a certified and true attestation by the clerk of the appropriate court or administrative agency. Exhibit D has not been so certified. Counsel for Southern Bell also raised issues of relevancy and hearsay relating to Exhibit D. The Commission has determined that the Exhibit which portends to be a excerpt of a transcript from a proceeding before the North Carolina Commission should be properly certified and attested for submission into evidence before this Commission, according to Rule 44(a)(2) of the South Carolina Rules of Civil Procedure. Therefore, the objection is sustained.

Accordingly, Southern Bell's objections to witness Townsend's testimony on page 6, lines 10-17 of the prefiled testimony (TR., Vol. 2, p. 48) should be stricken as it relates to the Exhibit D. Also, as was later ruled upon during the hearing, the objection concerning Exhibit I was sustained.

B. Authority for Coin Telephone and Pay-Tel to Provide Local and IntraLATA 0+ Calls

Before Coin Telephone and Pay-Tel can request this Commission to order Southern Bell to bill and collect for all "0+" intraLATA and local calls placed over COCOT telephones in a confinement facility, it must first be established that they are authorized by this Commission to provide this service. Coin Telephone and Pay-Tel assert that their provision of "0+" local and intraLATA calling was authorized in PSC Orders Nos. 88-512 and 89-1025 (Coin Telephone) and PSC Order No. 90-30 (Pay-Tel) (collectively referred

to herein as the Orders). A careful examination of the Orders, however, reveals that they do not convey such authority. Had the Commission intended to grant such authority, the Commission would have noticed such a request and held a hearing on the matter as required under the South Carolina Administrative Procedures Act (S.C. Code §1-23-10, et seq.) and the statutory requirements governing telephone utilities (S.C. Code §58-9-10, et seq.).

Both counsel and witnesses for Pay-Tel and Coin Telephone relied exclusively on the Orders to argue that these two COCOTs had been authorized to provide local and intraLATA "0+" calling from a confinement institution. TR. Vol. I, pp. 16 and Vol. II, pp. 98-100, 166, 167. Two of the Orders (specifically, Order No. 88-512 and Order No. 90-30), certify Coin Telephone and Pay-Tel, respectively, "to sell, vend, and install coin or coinless telephones in South Carolina." These two Orders further address the requirements that the telephone instrument must meet in order to be in compliance with the certification. These requirements are generic and have been routinely applied to all COCOT's certified in South Carolina. Witness Addis, TR. Vol. II, pp. 126-27; Hearing Exhibit 3.

Order No. 89-1025 and Order No. 90-30 do waive certain of the COCOT equipment requirements with regard to Coin Telephone and Pay-Tel. These two Orders were issued in response to substantially identical requests from Pay-Tel and Coin Telephone made by letter to the Commission Staff. Witness Townsend, TR. Vol. II, pp. 98-100. Thus, these Orders do no more than waive certain

requirements made applicable in the certification of Pay-Tel and Coin Telephone i.e., that these COCOT's instruments may be programmed in a certain way. The Orders do not grant additional authority to Pay-Tel and Coin Telephone beyond that granted in their certification (i.e., to sell, vend, and install coin or coinless telephones).

Both of the Orders granting waivers are limited to certain programming changes in the set's software that may be made at the request of a confinement facility. The Orders grant permission to "arrange" the telephone set so that it may allow or prevent a person using the set from doing certain things. Order Nos. 89-1025 and 90-30. Among these actions, the Orders provide that a telephone may be "arranged" to allow only "0+" collect calls for local, intraLATA and interLATA calls. Id. The Orders do not speak as to how the call is to be made, provided or carried, but only as to how the telephone set is to be "arranged" to permit certain types of calls to be made. There is no authority granted to either Coin Telephone or Pay-Tel to be the provider of such calls nor is such authority requested in their filings with the Commission.

Any person who seeks to resell telephone service or to provide AOS-type services in South Carolina must be authorized specifically to do so. The statute requires that in any "contested case," "all parties must be afforded an opportunity for hearing after notice...." S.C. Code Ann. §1-23-310(2). (Law. Co-op. 1976) (emphasis added). A "contested case" is defined by the statute as a proceeding "including but not restricted to ratemaking, price



fixing, and licensing, in which the legal rights, duties or privileges of a party are required to be determined by an agency after an opportunity for hearing." S.C. Code Ann., §1-23-310(2) (Law. Co-Op. (1976)). However, none of the Orders were issued following any notice or hearing. Witness Townsend, TR. Vol. 2, pp. 98-100. They were issued in response to written requests made on behalf of Coin Telephone and Pay-Tel. Id. No public notice was given. Id. Thus, the Orders could not be read to grant the authority that Pay-Tel and Coin Telephone assert. The Commission would not and did not intend to grant additional authority without the process required by South Carolina law.

C. Institution of Proceeding to Determine Whether 0+ Local and IntraLATA Authority Should be Granted

Based upon the Commission's determination that Coin Telephone and Pay-Tel do not have the proper authority from this Commission to provide "0+" local and intraLATA calling from COCOT facilities in confinement institutions, the Commission is of the opinion that it is necessary to hold another proceeding to determine whether or not COCOTs providing service to confinement facilities should be authorized to provide "0+" intraLATA and local collect operator assisted calls. Until this question is resolved, the Commission will not rule on whether Southern Bell should provide billing and collection services for automated collect calls provided by Coin Telephone and Pay-Tel or any other properly certified COCOT. The Commission is also holding in abeyance its decision concerning Telink's request for certification in Docket No. 89-550-C. If it

is determined in this future proceeding that such COCOT providers should be allowed to provide "0+" intraLATA and local automated operator assisted calls, the proceeding will also serve as the certification proceeding for such COCOTs. Therefore, the confinement facility COCOTS will have the burden of going forward to present testimony to show why they should be allowed to provide "0+" intraLATA and local automated operator assisted calls and also why they should be granted a certificate of public convenience and necessity to do so. Southern Bell should present appropriate testimony consistent with its apparent opposition to these COCOT providers.

All parties will receive notice of when the hearing scheduled in this matter will be held.


D. Ruling on Motions

Until this matter is resolved, Southern Bell's Motion to require Pay-Tel and Coin Telephone to cease and desist from providing telecommunications services in South Carolina is held in abeyance. The Commission finds that at the present time, it is not in the public interest to disrupt service to the confinement facilities where they are presently operating. The possible disruption to the inmate population in those facilities could cause unforeseen consequences. The Commission will require, however, that Pay-Tel and Coin Telephone shall cease and desist from marketing their services on the basis of any so-called authority and shall cease and desist from providing any new service in other confinement facilities until such authorization may be given -- if

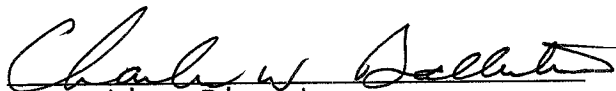
at all. That until this matter is resolved, Southern Bell's motion for an accounting of any such revenues derived from providing its services and for a refund shall not be ruled upon. The Commission also denies Southern Bell's request to institute a generic proceeding to inquire whether COCOTs are adhering to the terms of their certification from this Commission. Southern Bell provided no information outside of testimony presented concerning these two COCOTs that any of the literally hundreds of COCOTs certified by this Commission are not adhereing to the terms of their certification.

IT IS SO ORDERED.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Executive Director

(SEAL)